Supreme Court, U.S.
FILED

No. 97 1865 MAY 19 1998

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In The

Supreme Court of the United States

October Term, 1997

TERRIE SNYDER,

Petitioner,

vs.

SAMUEL J. RINGGOLD,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

THOMAS J. ALTHAUSER
Counsel of Record
ECCLESTON AND WOLF, P.C.
Attorneys for Petitioner
Scarlett Place, 7th Floor
729 East Pratt Street
Baltimore, Maryland 21202
(410) 752-7474

146366

(800) 274-3321 • (800) 359-6859
A DIVISION OF COUNSEL PRESS

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46 pp

QUESTIONS PRESENTED

1. Whether a government official may constitutionally deny a news reporter access to information which he makes available to other members of the media based upon his distaste for the substance of her reporting.

2. Whether the Fourth Circuit is required to follow this Court's holding in determining qualified immunity or whether they can re-establish the standards used prior to this Court's decision in *United States v. Lanier.*

PARTIES TO THE PROCEEDING

Terrie Snyder is the Petitioner; Samuel Ringgold is the Respondent. WBAL Division, The Hearst Corporation was a Party in Interest at the District Court, but was not a party at the Court of Appeals and is not a party here.

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Petitioner hereby petitions for writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit in *Terrie Snyder v. Samuel J. Ringgold* (No. 97-1358) is not reported, but can be found at 1998 WL 13528 (App. A). The relevant Opinions of the District Court are attached hereto. (App. B & C).

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit ("Court of Appeals") was entered on January 15, 1998. The Court of Appeals denied a timely petition for rehearing on February 18, 1998. (App. D).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment I:

> Congress shall make no law . . . abridging the freedom of speech, or of the press . . .

United States Constitution, Amendment XIV:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce

> any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

There are two fundamental questions in this case. The first is whether a government official, acting in his capacity as public information officer, may refuse access to governmental information to those members of the media (and only those members) whose reporting he dislikes. All cases cited by either party, including the Courts of Appeal of the First Circuit and Second Circuit have previously held that such actions are unconstitutional.

The second issue is whether the Court of Appeals can ignore this Court's recent decision of *United States v. Lanier*, 520 U.S. 259, 117 S. Ct. 1219, 137 L. Ed. 2d 432 (1997) which held that for purposes of determining whether a right is clearly established in the context of the qualified immunity test, the particular right need not be specifically adjudicated in either the Supreme Court or the particular Court of Appeals where the constitutional violation occurred. Here, contrary to this Court's holding in *Lanier*, the Court of Appeals held that because the right at issue had not been decided by the Fourth Circuit or the Supreme Court, the right was not clearly established and Ringgold could therefore not be held liable for his actions.

The Petitioner, Terrie Snyder (hereinafter "Snyder"), is a journalist who works both in the print and television media. The concentration of Snyder's work relates to crime in the

Baltimore Metropolitan area as well as the actions and policies of the Baltimore City Police Department (hereinafter "Department").

The Respondent, Samuel J. Ringgold, (hereinafter "Ringgold") was the Director of the Public Affairs Division of the Department and was responsible for the dissemination of all information from the Department to the various journalists concerning crime in Baltimore and the policies of the Baltimore City Police Department.

The series of events which led to the filing of this suit began in 1992 when Snyder was investigating the death of a young man in Baltimore City for her then employer, WBAL-TV. During that investigation, Snyder learned that the report given to her by the Department was not the complete report. Snyder was subsequently able to obtain the complete report which indicated that a prominent local politician may have had some link to the death of the young man.

A story was then aired on WBAL-TV which indicated that Snyder had initially been given a less than complete police report by the Department and which seemed to indicate that the Department may have been trying to cover up the prominent politician's connection to the young man who had been killed. Subsequent to the airing of that story on WBAL-TV, Snyder began to experience difficulty in obtaining information from the Department; and she was subsequently told by Ringgold that he believed Snyder had "set him up."

During 1993, the Department instituted a new policy that required that all journalists obtain all information regarding homicides directly from the Public Information Officer (hereinafter "PIO") of the Department. This policy was a break from prior policy which allowed the journalists to go directly

to the homicide detectives to obtain information regarding the criminal event.

After this policy was in place for a number of months, Ringgold advised both Snyder and her then employer, WBAL-TV that he had grown tired of responding to Snyder's requests for information regarding breaking news events on weekends.

Thereafter, Snyder wrote in an article in the City Paper (a weekly newspaper for which Snyder frequently writes) that the purpose of the new policy was to muzzle complaints by homicide detectives about a new rotation policy that had also been implemented by the Department.

The article indicated that Ringgold was asked what detectives' criticism of the new rotation policy had to do with the new order regarding dissemination of information about homicide investigations and responded "my sense is nothing." But, when Ringgold was further probed by Snyder as to whether he told another journalist in a local television news room that the policy had been instituted because too many detectives were talking to too many reporters about the new rotation policy, Ringgold responded "that was an off the record comment." Snyder advised Ringgold that the journalist to whom the comment was made had previously confirmed that there was never an agreement that the conversation was off the record.

Thereafter, on or about May 31, 1994, Ringgold wrote a letter to the news director for WBAL-TV. The letter stated that unless WBAL-TV took action regarding Snyder, that WBAL's relationship with the Department was in jeopardy. The letter specifically stated that the situation regarding Snyder had "become intolerable" and that while Ringgold would continue to provide "off the record" information to other members of

the media, he would no longer provide such information to Snyder.

Ringgold then began to take an even more active role in denying to Snyder the information which he made available to other members of the media. In or around January of 1995, Snyder arranged a television interview for her then employer, WBFF-TV, which she would conduct with personnel from the Department's homicide unit. Shortly before the story was to be filmed, Ringgold contacted the news director for WBFF-TV and informed him that if the television crew that was to film the story included Snyder, they would not be allowed to film the story or even be allowed access to the Department's headquarters building. The story was then filmed without Snyder due to Ringgold's refusal to allow her to participate with the other members of the media.

Ringgold's obstructive actions continued, and in or around March of 1995, Ringgold contacted the editor of the Baltimore City Paper and informed her that he would no longer talk to Snyder about any story, despite his position as the conduit of information from the Department. Ringgold further advised the editor of the City Paper, however, that he would continue to speak with any other individuals working for the City Paper.

Around May of 1995, Snyder contacted Ringgold's office at the Department and requested information for a story she was writing. Snyder was then informed that all of her requests for information from the Department would now have to be in writing. Other journalists who request information from the Department are not required to submit their requests for information in writing — only Snyder.

Snyder filed her Complaint against Ringgold in the United States District Court for the District of Maryland on October

24, 1995. Snyder sought damages, inter alia, under 42 U.S.C. §§ 1983 and 1988 for violations of her First and Fourteenth Amendment rights. The gravamen of Snyder's claims is that Ringgold violated her constitutional rights by denying her access to information which he made available to other members of the media. Snyder then, on April 30, 1996, moved for partial summary judgment with respect to liability on those claims. Ringgold opposed the Plaintiff's Motion asserting the sole defense that Snyder lacked standing to bring the action. On January 6, 1997, the District Court entered a Memorandum and Order granting the Plaintiff's Motion for Summary Judgment holding:

> In this case, [Snyder] alleged she was barred from certain news interviews and denied access to information about crime and policing policies in the Baltimore Metropolitan area by [Ringgold], in his capacity as the Director of the Public Affairs Division of the Baltimore City Police Department ("BCPD"). The record establishes that [Ringgold] did in fact take such actions because [Ringgold] took issue with the substance and style of the Plaintiff's reporting with regard to the BCPD. (App. C. at 13a).

Thereafter, Ringgold, after seeking leave of court, filed a Supplemental Motion for Summary Judgment, belatedly asserting the defense of qualified immunity. On February 11, 1997, the District Court issued a Memorandum and Order holding:

> This Court agrees with Plaintiff that Defendant's assertion of the defense of qualified immunity is without merit. In that connection, the Court is of the view that the rights of Plaintiff are clearly

> established and there is no reason why a reasonable person and/or a person in the position of the Defendant should not have known of them and acted in accordance with them. Accordingly, the defense of qualified immunity is hereby denied and this Court's prior Memorandum and Order filed January 6, 1997, granting partial summary judgment on the merits is hereby confirmed. (App. B. at 11a-12a).

Ringgold then filed a Notice of Appeal to the U.S. Court of Appeals for the Fourth Circuit on March 13, 1997. Both sides briefed the issue, and arguments were heard on December 4, 1997. On January 15, 1998, the Court of Appeals issued an eight-page, unpublished *per curiam* opinion, reversing the judgment of the United States District Court for the District of Maryland.

Despite the uncontradicted evidence before the Court of Appeals, the Court held that Ringgold was entitled to Qualified Immunity because the right at issue had not been clearly established. The Court of Appeals specifically held:

> A right is "clearly established" for qualified immunity purposes if it has been "specifically adjudicated," *Pritchett v. Alford*, 973 F.2d 307, 314 (4th Cir. 1992), that is, if it has been "authoritatively decided by the Supreme Court, the appropriate United States Court of Appeals, or the highest court of the State" in which the officers acted. *Wallace v. King*, 626 F.2d 1157, 1161 (4th Cir. 1980); see also *Jenkins v. Talledega City Board Of Education*, 115 F.3d 821, 826 n.4 (11th Cir. 1997) ("[L]aw can be 'clearly established' for qualified immunity purposes [in the 11th Circuit] only by decisions of

> the U.S. Supreme Court, Eleventh Circuit Court of Appeals, or the highest court of the state where the case arose." (App. A. 6a).

The Court of Appeals further noted that:

> The right for which Plaintiff contends has not been clearly established as specific adjudication. No Supreme Court or Fourth Circuit case has held that reporters have a constitutional right of equal or non-discriminatory access to government information that need not otherwise be made available to the public. (App. A at 6a).

The Court of Appeals went on to discuss whether a government official could deny equal access to information to members of the media. The court stated that "the government should be able to choose to limit its audience in a way it could not choose to limit the audience available to private speakers." (App. A at 9a-10a). Having held that government officials could selectively and arbitrarily deny access to information to some reporters and that, in any event, such a right was not clearly established, the court reversed the decision of the District Court and ordered that judgment be entered in favor of Ringgold.

REASONS FOR GRANTING THE WRIT

I.

THIS CASE PRESENTS AN IMPORTANT QUESTION OF LAW BECAUSE THE OPINION BELOW DIRECTLY CONFLICTS WITH THE FIRST AMENDMENT DECISIONS OF ALL OTHER CIRCUITS AND LOWER COURTS WHICH HAVE ADDRESSED THE ISSUE OF MEDIA REPRESENTATIVES' ENTITLEMENT TO EQUAL ACCESS TO GOVERNMENT INFORMATION

This Court should grant a writ of certiorari in this case because the Court of Appeals has decided an important constitutional issue in a way that conflicts with the relevant decisions of this Court, all other Courts of Appeal that have addressed the issue and numerous other decisions. In this case, the Fourth Circuit decided that members of the press are not entitled to equal access to governmental information and that the government is entitled to make "content-based" decisions as to which members of the media will be provided access to that information. Such a holding is unquestionably at odds with all other Courts of Appeal who have addressed the issue and is in conflict with the core constitutional principles set forth by this Court and the Courts of Appeal.

Under the First Amendment, journalists have been generally recognized to have a limited right of access to newsworthy events in their capacity as representatives of the public and on their own behalf as members of the press. *See Richmond Newspapers, Inc., v. Virginia*, 448 U.S. 555, 580 (1980) (Berger, C. J.) (finding that press clause guarantees right to attend criminal trials); *Publicker Industries, Inc. v. Cohen*, 733 F.2d 1059 (3d Cir. 1984) (extending right of access to civil proceedings); *Cable News Network v. American Broadcasting*

Companies, 518 F. Supp. 1238, 1244 (N.D. Ga. 1981) (finding "enduring in vital tradition of public entree [through the press as agents] to presidential activities covered by press pools").

Moreover, public officials may not impede the free exercise of speech or press simply because the content is insulting, disturbing or critical. *Terminiello v. Chicago*, 337 U.S. 1 (1949); *Kunz v. New York*, 340 U.S. 290 (1951); *Cox v. Louisiana*, 379 U.S. 536 (1965). As Judge Learned Hand stated more than fifty years ago, the First Amendment

> presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, then through any kind of authoritative selection. To many this is, and always will be folly; but we have staked upon it our all.

United States v. Associated Press, 52 F. Supp. 362, 372 (S.D.N.Y. 1943). This Court has repeatedly encouraged a robust and uninhibited discussion of public issues and has consistently sought to protect newspapers from overreaching public officials. *Near v. Minnesota*, 283 U.S. 697 (1931); *Grosjean v. American Press Co.*, 297 U.S. 233 (1936); *Smith v. California*, 361 U.S. 147 (1959).

> Not only newsman and the publications for which they write, but also the public at large have an interest protected by the First Amendment in assuring that restrictions on news gatherings be no more egregious than necessary, and that individual newsmen not be arbitrarily excluded from sources of information.

Sherrill v. Knight, 569 F. 2d 124 (D.C. App. 1977) citing, *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 491-92 (1975); *Abrams v. United States*, 250 U.S. 616 (1919) (Holmes, J., dissenting).

Several of the circuits of the United States Courts of Appeal have previously held that governmental officials cannot treat reporters differently when disseminating information. In *American Broadcasting Companies, Inc. v. Cuomo*, 570 F.2d 1080 (2d. Cir. 1977), the Court of Appeals was faced with a situation where members of ABC's television crews were not permitted to broadcast live coverage of certain primary election events based upon the candidates' sympathies for ABC's striking employees. There the court found that denial of access to ABC, while admitting other media representatives, constituted a violation of the First Amendment. *Id.* at 1083. The court specifically stated that

> [w]e think that once there is a public function, public comment, and participation by some of the media, the First Amendment requires equal access to all of the media or the rights of the First Amendment would no longer be tenable.

Id. The court further stated that the exclusion of one member of the media while allowing admission to other members of the media was a specific violation of the First Amendment. *Id.*

In *Anderson v. Cryovac, Inc.*, 805 F.2d 1 (1st Cir. 1986) the Court of Appeals addressed a situation where the local District Court allowed access to certain discovery materials to only one member of the local media. *Id.* at 9. The court there held that "a Court may not selectively exclude news media from access to information otherwise made available for public dissemination." *Id.* citing *American Broadcasting Companies, Inc. v. Cuomo*, 570 F.2d 1080, 1083 (2d Cir. 1977); *McCoy v. Providence Journal Co.*, 190 F.2d 760, 766 (1st Cir.), *cert. denied*, 342 U.S. 894 (1951). The *Anderson* court further stated that

> the danger in granting favorable treatment to certain members of the media is obvious; it allows the government to influence the type of substantive media coverage that public events will receive. Such a practice is unquestionably at odds with the First Amendment.

Anderson at 9.

Several United States District Courts have also addressed the issue of disparate treatment of members of the media by governmental officials. In *Stevens v. New York Racing Association*, 665 F. Supp. 164 (E.D.N.Y. 1987), the court addressed a situation where the Plaintiff was restricted from access to certain areas of the Defendant's racing tracks while other members of the media were given access. *Id.* at 166. The court there found that such a restriction violated the Plaintiff's rights under the First Amendment. The *Stevens* Court stated:

> [w]hen some members of the press are given access to cover an event, the state cannot arbitrarily impose limits on other press representatives' access to the news. Thus, the First Amendment prohibits government from restricting a journalist's access to areas otherwise open to the press based upon the content of the journalist's publications.

Id. at 175 (citations omitted).

In *Quad City Community News Service, Inc. v. Javens*, 334 F. Supp. 8 (S.D. Iowa 1971), local police officials denied an "underground newspaper" (Quad City Community News Service) access to police department records which were made available to other members of the media. *Id.* at 12. In *Quad*

City, the local police department refused to issue a press pass to any employee of the Quad City Community News Service. *Id.* The police department also refused to allow any individual without a press pass access to police records, thereby effectively denying Quad City Community News Service access to the police records. *Id.* These same police records were readily provided to other newspapers whose members had been issued a press pass. *Id.* The court there stated that

> Defendant's denial of access by Quad City to records available to the other media presents an obvious case of denial of equal protection of the law in violation of the Fourteenth Amendment of the Federal Constitution.

Quad City at 15.

In *Borreca v. Fasi*, 369 F. Supp. 906 (D. Haw. 1974), the United States District Court for the District of Hawaii addressed a similar situation in which a governmental agency attempted to selectively restrict access to information which was freely given to other members of the news media. In *Borreca*, the court stated:

> The limitations that may be placed by state action on this right of access are determined by a balancing process in which the importance of the news gathering activity and the degree and type of the restraints sought to be imposed are balanced against the state interest to be served. Where First Amendment rights are involved, the asserted state interest must be compelling and the proposed state action must be the least restrictive means available for the asserted governmental end.

Borreca at 909.

In *Westinghouse Broadcasting, Inc. v. Dukakis*, 409 F. Supp. 895 (D.C. Mass. 1976), the District Court also addressed a situation remarkably similar to Snyder's. There, the Plaintiff's reporters were denied access to various public meetings and press conferences by members of the Boston City Counsel who were acting out of sympathy for a local union whose members were employees of the Plaintiff and were on strike. *Id.* at 896-897. The court there stated that, while public officials need not furnish information, other than public records, to journalists, the opportunities to cover official news sources must be the same for all news gatherers. *Westinghouse* at 896, citing *Quad City* and *Borrecca*.

In *Southwestern Newspapers Corp. v. Curtis*, 584 S.W. 2d 362 (Tex. Civ. App. 1979), the Court of Civil Appeals of Texas also addressed a situation similar to Snyder's. There, the local District Attorneys Office implemented a rule which required the Plaintiff to make an appointment to obtain access to official news sources within that department. *Id.* at 364. Other media personnel were not required to make such an appointment. *Id.* The court cited *Quad City* and stated that

> [w]hile public officials need not furnish information, other than public records, to any news agency, a public official may not constitutionally deny to one media access that is enjoyed by another media, because one media is entitled to the same right of access as any other.

Southwestern at 364-365.

Without exception, all of the available case law holds that, once the government has made information generally available to some members of the media, it may not refuse other members of the media equal access to that same information.

The District Court found without question that Ringgold had violated Snyder's constitutional rights by denying her access to information which was freely given to other members of the media. (App. C at 13a). The District Court specifically stated that

> the record establishes that the Defendant did in fact take such actions because the Defendant took issue with the substance and style of the Plaintiff's reporting with regard to the Baltimore City Police Department.

(App. C at 13a). The District Court correctly held that while officials such as Ringgold only need to afford the news media a limited right to information which the agency and/or official has on hand, once such an agency and/or official makes such information generally available to the news media, such agency and/or official may not treat members of the news media, including reporters working for such news organizations, unequally. (App. C at 15a).

The Court of Appeals disregarded well-settled case law of this Court and other jurisdictions in its determination that the First Amendment does not provide a right of equal access to members of the media. Accordingly, this Court should grant a writ of certiorari in this case.

II.

THIS CASE PRESENTS AN IMPORTANT QUESTION OF LAW BECAUSE THE COURT OF APPEALS DECISION DIRECTLY CONFLICTS WITH THIS COURT'S DECISION IN *UNITED STATES v. LANIER*

Snyder's petition for writ of certiorari should also be granted because the Court of Appeals ignored this Court's standard for the issue of determining when a right is "clearly established," for purposes of qualified immunity. In the decision below, the Court of Appeals held that in order for Snyder to show that a right had been "clearly established" for qualified immunity purposes, she must show that the right had been specifically adjudicated by the Supreme Court, the Fourth Circuit Court of Appeals, or the highest Court of the State of Maryland (where Ringgold's actions occurred). In support of that proposition the court cited to its own decision of *Pritchett v. Alford*, 973 F.2d 307, 314 (4th Cir. 1992). Such a standard has been found by this Court to be much too restrictive.

In *United States v. Lanier*, 520 U.S. 259, 117 S. Ct. 1219, 137 L. Ed. 2d. 432 (1997), this Court specifically stated that there is *no* requirement that a case be decided by a particular circuit or the Supreme Court for purposes of establishing that the right was "clearly established" in the qualified immunity context.

The Fourth Circuit expressly ignored this Court's holding. The *Lanier* case addressed a Sixth Circuit ruling and held that, for purposes of determining whether the "fair warning requirement" of 18 U.S.C. § 242 had been met, there was no need for a categorical rule that decisions of the Courts of Appeals and other courts were inadequate as a matter of law to provide it. The Court further noted that the "fair warning"

requirement was identical to the "clearly established" requirement for civil liability under 42 U.S.C. § 1983. *Lanier* at 1227.

In *Lanier*, this Court explained that qualified immunity merely seeks to ensure that Defendants reasonably can anticipate when their conduct may give rise to liability. *Id.* The Court specifically stated that there is no requirement, for purposes of determining whether a right is clearly established, that the particular right be specifically adjudicated in either the Supreme Court or the particular Court of Appeals. *Id.* In the decision of this case, the Court of Appeals incorrectly stated that a right can be clearly established only if it has been decided by this Court, the Fourth Circuit Court of Appeals or the highest court of the relevant State. That standard for determining when a right is clearly established is directly in conflict with this Court's holding in *Lanier* and is improper.

In *Lanier*, this Court further stated that there is no requirement that precedents are required to be fundamentally similar from a factual perspective to establish the requisite notice. The Court stated that notable ~~factual~~ distinctions between the precedents relied on and the case at issue were acceptable, so long as the prior decisions gave reasonable warning that the conduct of the official violated constitutionally protected rights. *Id.* In light of the numerous cases cited by *Snyder, supra*, which hold that a government official may not deny certain members of the media access to information which they make available to members of the media generally, there can be no question that Snyder's right was clearly established.

Moreover, Ringgold's utter failure to present any case law which would justify his conduct or even to point to a case which could arguably create uncertainty as to whether his conduct was unlawful, further underscores the fact that the

right at issue was clearly established at the time of Ringgold's actions. In light of the fact that all of the relevant case law indicates that Ringgold's conduct was unlawful, there can be no question that Snyder's right to have the same access to governmental information which was given to other journalists had been clearly established and Ringgold was on notice to act accordingly.

Lanier was brought to the attention of the Court of Appeals prior to the oral argument, pursuant to Federal Rule of Appellate Procedure 28(j) and Local Rule 28(j). In light of the holding of *Lanier*, and the numerous cases which stand for the proposition that all members of the media must be given equal access to governmental information, Snyder requests that this Court grant this Petition for Writ of Certiorari to review the decision of the Court of Appeals.

CONCLUSION

This case presents a question of exceptional importance — whether government officials can deny information to those reporters whose style and substance of reporting the officials do not like. By granting Terrie Snyder's petition for writ of certiorari, this Court can correct the Fourth Circuit's decision, which completely ignored this Court's holding in *Lanier* and the holdings of every other Circuit Court and District Court which has considered the issue of whether reporters can be treated disparately based on the government's distaste for their reporters.

Respectfully submitted,

THOMAS J. ALTHAUSER
Counsel of Record
ECCLESTON AND WOLF, P.C.
Attorneys for Petitioner
Scarlett Place, 7th Floor
729 East Pratt Street
Baltimore, Maryland 21202
(410) 752-7474

APPENDIX A — OPINION OF THE UNITED STATES FOR THE COURT OF APPEALS FOR THE FOURTH CIRCUIT DECIDED JANUARY 15, 1998

UNPUBLISHED

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 97-1358

TERRIE SNYDER,

Plaintiff-Appellee,

v.

SAMUEL J. RINGGOLD,

Defendant-Appellant,

and

WBAL DIVISION, THE HEARST CORPORATION,

Party in Interest.

Appeal from the United States District Court
for the District of Maryland, at Baltimore.
Frank A. Kaufman, Senior District Judge.
(CA-95-3197-K)

Argued: December 4, 1997

Decided: January 15, 1998

Appendix A

Before LUTTIG and WILLIAMS, Circuit Judges, and MERHIGE, Senior United States District Judge for the Eastern District of Virginia, sitting by designation.

Reversed by unpublished per curiam opinion.

* * *

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Plaintiff-appellee, Terrie Snyder, filed a § 1983 claim seeking damages for alleged violations of her First and Fourteenth Amendment rights by the defendant-appellant, Samuel Ringgold. Plaintiff is a journalist who works in the print and television media. Defendant is the Director of the Public Affairs Division of the Baltimore City Police Department, and is responsible for the dissemination of information from the Department to the media. Plaintiff alleges that the defendant violated her constitutional rights by denying her access to Department information on the same terms that it was made available to other members of the news media. *See* J.A. at 7-15.

In 1992, Snyder aired a story for WBAL-TV that alleged that the Department might have attempted to cover up a prominent politician's connection to a young murder victim. *See* J.A. at 35. According to Snyder's affidavit, Ringgold later told Snyder that he believed she had "set him up" for that story, and Snyder then began to experience difficulties in obtaining information from Ringgold. J.A. at 36.

Appendix A

In 1993, the Department instituted a new policy requiring that all journalists obtain all information regarding homicides from a Public Information Officer (PIO) of the Department, rather than directly from homicide detectives. A PIO (Ringgold or one of his staff) would be "on call" to be paged on the weekends to provide information. According to Snyder, after this policy had been in place for several months, Ringgold advised Snyder and her then employer, WBAL-TV, that he was tired of responding to Snyder's weekend pages. Snyder then wrote an article in the *City Paper* criticizing the new policy regarding the dissemination of information to journalists as an attempt to silence homicide detectives' complaints about Department policy. In that article, Snyder attributed a statement to Ringgold, stated that he claimed it was an off-the-record comment to another reporter (apparently at the assignment desk of WBAL-TV), and then alleged that the other reporter had confirmed that the comment was not, in fact, off-the-record. *See* J.A. at 16.

Thereafter, on May 31, 1994, Ringgold wrote a letter to the news director for WBAL-TV, stating that the situation regarding Snyder had "become intolerable." He expressed his "outrage[ ] that an off the record comment" he had made to one of WBAL's assignment editors "made its way into a *City Paper* article written by Terrie Snyder," and stated that, because of the incident, he would "never go off the record with people on [WBAL's] assignment desk" and had ordered his staff to do likewise. J.A. at 14. Ringgold also asserted in the letter that Snyder was continuing to abuse the paging system by paging PIOs needlessly on weekends. *See* J.A. at 15. The letter also stated that "[a]fter reading the *City Paper* article, I am of the opinion that Ms. Snyder has developed friendships in the department that prevent her from being an objective journalist."

J.A. at 14-15. Finally, Ringgold complained that Snyder had falsely represented to WBAL that the Department had not provided her with all available information about a pending homicide case. *See* J.A. at 14.

Following the May 31, 1994, letter, Ringgold refused to allow Snyder to participate with a television crew from WBFF-TV in filming interviews with Department personnel in the Department's headquarters about the homicide division. Ringgold also contacted the editor of the *City Paper* and informed her that he would no longer talk to Snyder about any story. Unlike other journalists, Snyder was directed to submit all requests for information from the Department in writing. *See* J.A. at 7-9, 16c. Snyder alleges that Ringgold's motivation for these actions was his displeasure with her stories about the Department. Ringgold alleges that Snyder was singled out for access restrictions because she violated a promise of confidentiality by attributing "off-the-record" information, because she had repeatedly abused the Department's public information system by paging officers unnecessarily on weekends, and because she had misrepresented the Department's actions to her employer. *See* Appellant's Brief at 6.

Based on the foregoing events, Snyder brought this § 1983 suit, alleging that Ringgold violated the First and Fourteenth Amendments by placing restrictions on her access to Department information. Snyder then moved for partial summary judgment with respect to liability on her § 1983 claim. *See* J.A. at 17-19. Ringgold opposed Snyder's motion and filed a cross-motion for summary judgment. *See* J.A. 38-46. On January 6, 1997, the court denied Ringgold's motion for summary judgment and granted Snyder's motion for summary judgment on liability. *See* J.A. at 84. Even though the press has no general First

Amendment right of access to information about police investigations, the district court held that, absent a "compelling governmental interest," once a government agency or official "makes such information generally available to the news media, such agency and/or official may not treat members of the news media, including the reporters working for such news organizations, unequally." J.A. at 85. The court found that "[t]he record establishes that the defendant [restricted plaintiff's access] because the defendant took issue with the substance and style of the plaintiff's reporting with regard to the [Department]," J.A. at 84, and therefore that defendant had violated plaintiff's First Amendment rights.

On January 28, 1997, the defendant, with leave of court, filed a supplemental motion for summary judgment, asserting the defense of qualified immunity. *See* J.A. at 56-58. On February 11, 1997, the court denied this motion, holding — without analysis — that defendant was not entitled to qualified immunity on plaintiff's claim. *See* J.A. at 88. Defendant appeals the district court's denial of qualified immunity.

We hold that the district court erred in denying defendant qualified immunity. Government officials are not liable for damages "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Anderson* v. *Creighton*, 483 U.S. 635, 638 (1987). Thus, qualified immunity "shields officials 'insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have 4 known.' " *DiMeglio* v. *Haines*, 45 F.3d 790, 794 (4th Cir. 1985) (quoting *Harlow* v. *Fitzgerald*, 457 U.S. 800, 818 (1982)).

Appendix A

A right is "clearly established" for qualified immunity purposes if it has been "specifically adjudicated," *Pritchett* v. *Alford*, 973 F.2d 307, 314 (4th Cir. 1992), that is, if it has been "authoritatively decided by the Supreme Court, the appropriate United States Court of Appeals, or the highest court of the state" in which the officers acted. *Wallace* v. *King*, 626 F.2d 1157, 1161 (4th Cir. 1980); *see also Jenkins* v. *Tallaedega City Board of Education*, 115 F.3d 821, 826 n.4 (11th Cir. 1997) ("[L]aw can be "clearly established" for qualified immunity purposes [in the Eleventh Circuit] only by decisions of the U.S. Supreme Court, Eleventh Circuit Court of Appeals, or the highest court of the state where the case arose."). Additionally, a right may be clearly established even though it has not been specifically adjudicated when it is "manifestly included within more general applications of the core constitutional principle invoked." *Pritchett*, 973 F.3d at 314.

The right for which plaintiff contends has not been clearly established by specific adjudication. No Supreme Court or Fourth Circuit case has held that reporters have a constitutional right of equal or non-discriminatory access to government information that need not otherwise be made available to the public. In fact, the district court opinion below relied only on three, relatively old federal district court decisions and one state court of appeals decision in support of its holding that Ringgold had violated Snyder's First Amendment rights. *See* J.A. at 85-86 (citing *Borreca* v. *Fasi*, 369 F. Supp. 906, 909 (D. Haw. 1974); *Quad City Community News Service, Inc.* v. *Javens*, 334 F. Supp. 8 (S.D. Iowa 1971); *Westinghouse Broadcasting, Inc.* v. *Dukakis*, 409 F. Supp. 895 (D. Mass. 1976); *Southwestern Newspapers Corp.* v. *Curtis*, 584 S.W.2d 362 (Tex. Civ. App. 1979)).

On appeal, the plaintiff has cited cases from the First, Second, and District of Columbia Circuit Courts of Appeals that consider issues that she believes to be analogous to the issue in this case. *See Anderson* v. *Cryovac, Inc.*, 805 F.2d 1, 9 (1st Cir. 1986) (holding that a district court could not provide access to certain discovery materials to one newspaper and then deny access to competing newspapers); *American Broadcasting Companies* v. *Cuomo*, 570 F.2d 1080, 1083 (2d Cir. 1977) (holding that New York political candidates could not selectively exclude ABC from "public function[s]" — the primary election events — while admitting other media representatives); *Sherrill* v. *Knight*, 569 F.2d 124, 129 (D.C. Cir. 1977) (holding that, because the White House has established press facilities that are perceived as being open to all bona fide Washington-based journalists, access to those facilities may not be "denied arbitrarily or for less than compelling reasons"). The plaintiff's resort to these out-of-circuit cases merely underscores the lack of Fourth Circuit and Supreme Court law establishing the right for which she contends. Indeed, the fact that plaintiff is forced to rely on these cases — the facts of which differ markedly from Ringgold's limitations on the manner in which Snyder could access Department information and his refusal to allow her to participate in filming an exclusive report on Department premises — demonstrates that there is little support for her contentions even in the case law of other circuits.

Moreover, we are not persuaded that Ringgold's decisions to deal with Snyder only in writing (rather than to speak to her directly) and to prohibit her from participating in the filming of exclusive WBFF-TV interviews with Department personnel violate any right that is "manifestly included within more general applications of the core . . . principle[s]" of the First Amendment. *Pritchett*, 973 F.2d at 314. Plaintiff contends that the "right for

a journalist to have equal access to public information sources" and "to be treated the same as other journalists," Appellee's Brief at 23-24, is inherent in the core guarantees of the First Amendment.

The many weaknesses in plaintiff's position are readily apparent. For example, the broad rule for which plaintiff argues would presumably preclude the common and widely accepted practice among politicians of granting an exclusive interview to a particular reporter.* And, it would preclude the equally widespread practice of public officials declining to speak to reporters whom they view as untrustworthy because the reporters have previously violated a promise of confidentiality or otherwise distorted their comments. Additionally, even if the right was somehow limited to situations in which access is provided to a broad spectrum of reporters, the plaintiff's rule would still presumably preclude the White House's practice of allowing only certain reporters to attend White House press conferences, even though space constraints make it impractical to open up the conference to all media organizations. That plaintiff's rule flies in the face of so much well settled practice suggests, at least, that it is not clearly established.

Moreover, the right of "equal access" for which plaintiff argues cannot be limited to members of the media without

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* Plaintiff's rule could not logically extend only to those officials who are specifically designated by the government as the press or public relations agent for a department on the ground that the information they have cannot be obtained elsewhere. Most public officials have information that cannot be accessed through other sources. Indeed, reporters often compete for the prized exclusive interviews precisely because the information revealed in such interviews is not otherwise available.

conferring a privileged First Amendment status on the press, and the Supreme Court has affirmed that the press does not enjoy special First Amendment rights that exceed those of ordinary citizens. *See Branzburg* v. *Hayes*, 408 U.S. 665, 684-85 (1972) (noting that the First Amendment "does not guarantee the press a constitutional right of special access to information not available to the public generally"). Consequently, plaintiff's asserted right would require that, in each and every circumstance where the government made news available, it would have to give access to that information to *everyone* on equal terms. The broad rule for which plaintiff contends thus appears untenable. In any event, the contours of any such right would be difficult to delineate, and certainly cannot be discerned through a straightforward and obvious application of existing First Amendment principles.

Plaintiff also argues that, even if a government agency can favor one reporter over another for "legitimate" reasons, it cannot do so because it likes one reporter's stories better than another's. Plaintiff claims that this more specific right not to have her access to government information sources restricted because of her viewpoint and the content of her stories is an "obvious application" of the core First Amendment principle prohibiting content and viewpoint discrimination. However, it is a large analytical leap from holding that government may not regulate or prohibit private speech on the basis of content or viewpoint to holding that government may not make "content-based" distinctions between reporters in granting access to government information. Indeed, the government can certainly control the content of its own speech in ways it could never regulate or control the content of private speech. *See, e.g.* , *Rust* v. *Sullivan*, 500 U.S. 173 (1991). Arguably, by analogy, the government should be able to choose to limit its audience in a way it could

not choose to limit the audience available to private speakers. In any event, it should be apparent that the contours of any right that a reporter has not to be discriminated against in her access to government information based on the content of her prior stories are not "sufficiently clear" that Ringgold — or any other "reasonable official" — would have understood that simply restricting the manner in which Snyder could receive Department information and refusing her exclusive interviews on Department premises violated that right. *Anderson*, 483 U.S. at 640.

Accordingly, the judgment of the district court is

REVERSED.

APPENDIX B — MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND DATED FEBRUARY 11, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CIVIL NO. K-95-3197

TERRI SNYDER

Plaintiff

v.

SAMUEL J. RINGGOLD,

Defendant

MEMORANDUM AND ORDER

1) Reference is hereby made to this Court's January 6, 1997 Memorandum and Order, to the on-the-record telephone conference held in this case by this Court, and to any and all filings by counsel in this case since that date.

2) All filings to date have been received and considered by this Court and any objection on the part of counsel for plaintiff in that regard are hereby rejected.

3) This Court agrees with plaintiff that defendant's assertion of the defense of qualified immunity is without merit. In that connection, this Court is of the view that the rights of plaintiff are clearly established and there is no reason why a reasonable

person and/or a person in the position of the defendant should not have known of them and acted in accordance with them. Accordingly, the defense of qualified immunity is hereby denied and this Court's prior Memorandum and Order filed January 6, 1997, granting partial summary judgment on the merits is hereby confirmed.

4) It is this Court's recollection that during the aforementioned on-the-record telephone conference, ~~that~~ counsel for the defendant indicated that he might be taking an intermediate appeal to the Fourth Circuit. In light of this comment, the Court will not enter a further scheduling order in this case with regard to any pending damage issues.

s/ [illegible]
Senior United States District Judge
2/11/97

APPENDIX C — MEMORANDUM AND ORDER IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND DATED JANUARY 6, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CIVIL NO. K-95-3197

TERRIE SNYDER,

Plaintiff

V.

SAMUEL J. RINGGOLD,

Defendant

MEMORANDUM AND ORDER

1) Summary Judgment as to plaintiffs pending partial summary judgment motion is hereby granted. Defendant's motion for summary judgment is hereby denied.

2) In this case, plaintiff alleged she was barred from certain news interviews and denied access to information about crime and policing policies in the Baltimore metropolitan area by the defendant, in his capacity as the Director of the Public Affairs Division of the Baltimore City Police Department ("BCPD"). The record establishes that the defendant did in fact take such actions because the defendant took issue with the substance and style of the plaintiff's reporting with regard to the BCPD. In particular, the professional relationship between the plaintiff

and the defendant appears to have deteriorated after the plaintiff's report concerning the death of a certain man who had died in Baltimore City. Plaintiff at that time was investigating the said death for her then employer, WBAL-TV 11 ("WBAL"). After an usually long wait, the plaintiff received her initial information regarding the death from a police report from a member of the BCPD. (Synder Aff. ¶ 2.) Subsequently, plaintiff obtained an additional report which "indicated that a prominent local politician may somehow be linked to the death of the young man." (Synder Aff. ¶ 3.) WBAL carried Snyder's report of the matter, and in so doing noted that the plaintiff claimed that the initial report obtained from the police department was an attempt "to cover up the politician's connection to the man who died." (Synder Aff. ¶ 3.)

3) Plaintiff states that in 1993, after the above mentioned occurrence (in 1992), the BCPD instituted a new policy regarding dissemination of information to journalists. The new policy centralized the release of information from the department through the Public Affairs Division, and plaintiff states that the defendant began at some time thereafter to hinder ~~the~~ her access to information. In any event, the record establishes without dispute that on or about May 31, 1994, defendant wrote a letter to WBAL, which was then the plaintiff's employer, in which he stated: (1) the plaintiff would not be able to receive any "off-the-record" information from anyone at the police department; (2) indicated that this type of treatment was different than the treatment which other journalists receive; and (3) WBAL's relationship with the BCPD might be jeopardized by WBAL's relationship with Synder. Thereafter, in the latter part of 1994, plaintiff was discharged from her employment by WBAL.

4) While it may well be that officials at the BCPD, such as the named individual defendant herein, only need to afford to the news media, and to reporters working for such news organizations, a limited right to information which the said agency and/or official have on hand, however, once such an agency and/or official make such information generally available to the news media, such agency and/or official may not treat members of the news media, including the reporters working for such news organizations, unequally.

> The limitations that may be placed by state action on this right of access are determined by a balancing process in which the importance of the news gathering activity and the degree and type of the restraint sought to be imposed are balanced against the state interest to be served. Where First Amendment rights are involved, the asserted state interest must be compelling and the proposed state action must be the least restrictive means available for the asserted governmental end.

Borreca v. Fasi, 369 F. Supp. 906, 909 (D. Hawaii 1974). In this instance, the fact that the individual defendant and the BCPD did not like the substance or style of the plaintiff's reporting does not come close to meeting the compelling governmental interest required under the aforementioned balancing process to sustain selective restrictions on plaintiff's access to information freely given to other members of the news media. *Compare Borreca*, 369 F. Supp. at 910 ("Newspaper reporters are not always accurate and objective. They are subject to criticism, and the right of a governmental official to criticize is within the First Amendment guarantees. But when criticism transforms into an attempt to use the powers of governmental office to intimidate

or to discipline the press or one of its members because of what appears in print, a compelling governmental interest that cannot be served by less restrictive means must be shown for such use to meet Constitutional standards. No compelling governmental interest has been shown or even claimed here.").

5) Defendant takes the position that the abovementioned First Amendment rights run only in favor of the news media itself and not in favor of a reporter. While the cases cited by the parties, in their briefs submitted in this case, were largely brought only by news organizations and not by a reporter, there is nothing in those opinions — or in any other cases or commentary known to this Court — that indicate such a limitation. *See Westinghouse Broadcasting Co.. Inc. v. Dukakis* 409 F. Supp. 895 (D. Mass. 1976); *Quad-City Community News Service. Inc. v. Jebens*, 334 F. Supp. 8 (S.D. Iowa 1971); *Southwestern Newspapers Co. v Curtis*, 584 S.W.2d 362 (Tex. Ct. Civ. App. 1979). Also, in that regard, an individual reporter and a news organization were joint plaintiffs in *Borreca v. Fasi*, and the Court in that case, makes it completely clear that relief was not only to the news organization but to the individual plaintiff himself. "Plaintiffs are entitled to a preliminary injunction enjoining Defendant Frank F. Fasi from preventing, or from instructing or advising any person to prevent, Plaintiff Richard Borreca from attending any press conference on the same basis and to the same extent that other news reporters attend press conferences." *Borreca*, 369 F. Supp. at 911.

6) This Court will conduct a telephone conference with counsel on both sides on January 21, 1997 at. 2:00 p.m. to discuss the manner in which the parties intend to proceed.

7) The Clerk is directed to send copies of this Memorandum and Order to counsel of record.

8) It is so ORDERED this 6th day of January, 1997.

s/ [illegible]
Senior United States District Judge

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DENYING PETITION FOR REHEARING FILED FEBRUARY 18, 1998

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-1358 CA-95-3197-K

FILED
February 18, 1998

TERRIE SNYDER

Plaintiff - Appellee

v.

SAMUEL J. RINGGOLD

Defendant - Appellant

and

WBAL DIVISION, THE HEARST CORPORATION

Party in Interest

On Petition for Rehearing with Suggestion
for Rehearing In Banc

The appellee's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

Appendix D

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,

/s/ Patricia S. Connors
CLERK

Supreme Court, U.S.
FILED
JUL 20 1998
OFFICE OF THE CLERK

No. 97-1865

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1997

TERRIE SNYDER,
Petitioner,

v.

SAMUEL J. RINGGOLD,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ROBERT C. VERDERAIME
Counsel of Record for Respondent
Verderaime & DuBois, P.A.
1231 North Calvert Street
Baltimore, Maryland 21202

QUESTIONS PRESENTED FOR REVIEW

I. WHETHER THE COURT OF APPEALS APPLIED THE CORRECT LEGAL STANDARD FOR DETERMINING QUALIFIED IMMUNITY AND WHETHER ITS DECISION CONFLICTS WITH *UNITED STATES v. LANIER*.

II. WHETHER A REASONABLE POLICE OFFICER WOULD HAVE UNDERSTOOD THAT RESTRICTING THE MANNER IN WHICH PETITIONER RECEIVED DEPARTMENTAL INFORMATION WOULD VIOLATE A CLEARLY ESTABLISHED FIRST AMENDMENT RIGHT.

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STATEMENT OF THE CASE

The plaintiff-petitioner Terrie Snyder is a journalist who works in the print and television media. The defendant-respondent Samuel J. Ringgold is the Director of the Public Affairs Division of the Baltimore City Police Department, and is responsible for the dissemination of information from the Department to the media (J.A. at 7-15).

In 1992, Snyder was investigating the death of a Baltimore resident for WBAL-TV. The Baltimore Police Department (the "Department") gave Snyder a police report concerning the incident (J.A. at 6, 16b ¶ 5). Snyder subsequently obtained an additional report, which, unlike the first report, indicated that a prominent local politician had some connection with the decedent (J.A. at 35 ¶ 3). A story was then aired on WBAL-TV which suggested that the Department may have been attempting to cover up the politician's connection to the victim (J.A. at 35 ¶ 3).

Although Snyder alleges that she "began to experience difficulty in obtaining information" from the Department as a result of the 1992 story (J.A. at 36), there is no record evidence to support this contention. There is no record evidence that Ringgold denied or impeded Snyder's access to any departmental information throughout the remainder of 1992, during the entire calender year 1993, or between January and May 1994. Between the 1992 story and May 31, 1994, there is no record evidence of any incident where Snyder was treated differently from any other journalist covering the Department.

In 1993, the Department instituted a new policy requiring that all journalists obtain all information regarding homicides from a Public Information Officer (PIO) of the Department, rather than directly from homicide detectives. A PIO (Ringgold or one of his staff) would be "on call" to be paged on the weekends to provide information. According to Snyder, after this policy had been in place for several months, Ringgold advised Snyder and her then employer, WBAL-TV, that he was tired of responding to Snyder's weekend pages. Snyder then wrote an article in the *City Paper* criticizing the new policy regarding the dissemination of information to journalists as an attempt to silence homicide detectives' complaints about Department policy. In that article, Snyder attributed a statement to Ringgold, stated that he claimed it was an off-the-record comment to another reporter (apparently at the assignment desk of WBAL-TV), and then alleged that the other reporter had confirmed that the comment was not, in fact, off-the-record (*see* J.A. at 16).

Thereafter, on May 31, 1994, Ringgold wrote a letter to the news director for WBAL-TV, stating that the situation regarding Snyder had "become intolerable." He expressed his "outrage[] that an off the record comment" he made to one of WBAL's assignment editors "made its way into a *City Paper* article written by Terrie Snyder," and stated that, because of the incident, he would "never go off the record with people on [WBAL's] assignment desk" and had ordered his staff to do likewise (J.A. at 14). Ringgold also asserted in the letter that Snyder was continuing to abuse the paging system by paging PIOs needlessly on weekends (*see* J.A. at 15). Finally, Ringgold complained that Snyder had falsely represented

to WBAL that the Department had not provided her with all available information about a pending homicide case (*see* J.A. at 14).

Following the May 31, 1994 letter, Ringgold refused to allow Snyder to participate with a television crew from WBFF-TV in filming interviews with Department personnel in the Department's headquarters about the homicide division. Ringgold also contacted the editor of the *City Paper* and informed her that he would no longer talk to Snyder about any story. Unlike other journalists, Snyder was directed to submit all requests for information from the Department in writing (*see* J.A. at 7-9, 16c). Snyder was singled out for access restrictions because she violated a promise of confidentiality by attributing "off-the-record" information, because she had repeatedly abused the Department's public information system by paging officers unnecessarily on weekends, and because she had misrepresented the Department's actions to her employer (*see* J.A. at 7-9, 14-15).

Based on the foregoing events, Snyder brought this § 1983 suit, alleging that Ringgold violated the First and Fourteenth Amendments by placing restrictions on her access to Department information. Snyder then moved for partial summary judgment with respect to liability on her § 1983 claim (*see* J.A. at 17-19). Ringgold opposed Snyder's motion and filed a cross-motion for summary judgment (*see* J.A. at 38-46). On January 6, 1997, the court denied Ringgold's motion for summary judgment and granted Snyder's motion for summary judgment on liability (*see* J.A. at 84).

On January 28, 1997, the defendant, with leave of court, filed a supplemental motion for summary judgment, asserting the defense of qualified immunity (*see* J.A. at 56-58). On February 11, 1997, the court denied this motion, holding—without analysis—that defendant was not entitled to qualified immunity on plaintiff's claim (*see* J.A. at 88).

Defendant appealed the district court's denial of qualified immunity to the Court of Appeals for the Fourth Circuit.

The Court of Appeals for the Fourth Circuit reversed in an unpublished opinion, holding that the district court erred in denying the defendant qualified immunity (App. at 5a). The Court of Appeals for the Fourth Circuit held that the defendant-respondent Samuel Ringgold is entitled to qualified immunity under § 1983 because a reasonable police official in Ringgold's position would not have understood that his decisions to deal with Snyder only in writing and to prohibit her from filming exclusive interviews at the station house violated any clearly established First Amendment right to nondiscriminatory access to government information.

The Court's rationale was two-pronged. First, the Court held that the plaintiff's alleged right to equal access had not been specifically adjudicated, since no previous Supreme Court or Fourth Circuit case had recognized this right, and since there is little support for such a right even in the case law from other circuits (App. at 6a-7a). Second, the Court determined that Ringgold's decisions to restrict the manner in which she could gather departmental information did not violate "any right that is manifestly

included within the more general applications of the core principles of the First Amendment" (App. at 7a). The Court found that the right of "equal access" to governmental information for which plaintiff argues was contrary to well-settled practice, would confer an untenable special privilege on the press, and was not an obvious extension of core First Amendment principles prohibiting government regulation of the content of speech (App. at 8a-10a). Under these circumstances, the Court concluded that

> the contours of any right that a reporter has not to be discriminated against in her access to governmental information . . . are not sufficiently clear that Ringgold—or any other "reasonable official"—would have understood that simply restricting the manner in which Snyder could receive Department information and refusing her interviews on Department premises violated that right.

(App. at 10a.)

ARGUMENT

I. THE COURT OF APPEALS APPLIED THE CORRECT LEGAL STANDARD AND ITS DECISION DOES NOT CONFLICT WITH *UNITED STATES v. LANIER*.

Snyder alleges that the Court of Appeals applied the incorrect legal standard for determining when a right

is clearly established for purposes of qualified immunity. Specifically, Snyder alleges that the Court of Appeals required a showing that the right to equal access had been specifically adjudicated in a previous Supreme Court or Fourth Circuit decision, and that this requirement conflicts with *United States v. Lanier*, 117 S. Ct. 1219 (1997) (Pet. at 2, 16-17). Snyder errs, for several reasons.

A. The Court Of Appeals Did Not Require A Specific Adjudication In Order To Show That A Right Has Been Clearly Established.

Contrary to petitioner's allegation, the Court of Appeals Fourth Circuit did *not* require a specific adjudication in order to prove a clearly established right for First Amendment purposes. The Court of Appeals stated that

> [a] right is "clearly established" for qualified immunity purposes if it has been "specifically adjudicated," that is, if it has been "authoritatively decided by the Supreme Court, the appropriate United States Court of Appeals, or the highest court of the state" in which the officers acted. . . . *Additionally, a right my be clearly established even though it has not been specifically adjudicated when it is "manifestly included within more general applications of the core constitutional principle invoked."*

(App. A at 6a (emphasis added).)

The Court held that defendant Ringgold is entitled to qualified immunity because Snyder had established *neither* a specifically adjudicated right to equal access to government information *nor* that Ringgold's decision to restrict her access violated "any right that is manifestly included within more general applications of the core . . . principles of the First Amendment" (App. at 7a).

B. The Court Of Appeals Applied The Correct Legal Standard For Determining Qualified Immunity.

The doctrine of qualified immunity provides Ringgold, in his individual capacity, with a full defense to Snyder's § 1983 claim, provided that Ringgold's conduct did not "violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Underlying qualified immunity is the concern that civil damages awards against public officials would prove too expensive to the public, would discourage public service, and would impair governmental decisionmaking. *Anderson v. Creighton*, 483 U.S. 635, 638 (1987). Thus, the law shields government officials from civil liability unless the official reasonably should have known that his actions violated clearly established constitutional rights. *Harlow*, 457 U.S. at 818.

In determining whether the specific right allegedly violated is clearly established, the "'proper focus is not upon the right at its most general or abstract level, but at the level of its application to the specific conduct charged.'" *Dimeglio v. Haines*, 45 F.3d 790, 803 (4th Cir. 1995). As held in *Anderson*, 483 U.S. at 640:

> [T]he right the official is alleged to have violated must have been "clearly established" in a more particularized, and hence more relevant, sense: The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but it is to say that in the light of pre-existing law the unlawfulness must be apparent.

Judged by these principles, the Court of Appeals applied the correct standard. The Court of Appeals inquired whether the right to equal access to government information had been specifically adjudicated, or whether the right was manifestly included within the more general applications of core First Amendment principles. Through this inquiry, the Court determined ultimately that the existence and contours of any alleged right of equal access to government information was not sufficiently clear that a reasonable official would have understood that restricting the manner in which Snyder could receive Department information and refusing her exclusive interviews on Department premises violated that right (App. at 6a-10a). The Court of Appeals applied the correct legal standard.

C. The Court Of Appeals Decision Does Not Conflict With *United States v. Lanier.*

The Court of Appeals decision does not conflict with *United States v. Lanier*, 117 S. Ct. 1219 (1997). *Lanier* was not a § 1983 case and is only tangentially related to the issues in this case. In *Lanier*, the court held that the constitutional requirement of fair warning under 18 U.S.C. § 242 could not be more demanding than the "clearly established law" required for liability under § 1983. 117 S. Ct. at 1227. The court rejected a standard that would require a prior decision on substantially similar facts in order to provide fair warning that an official's conduct was unlawful. *Id.*

In the present case, contrary to the petitioner's allegation, the Court of Appeals did not require that the specific right be adjudicated by the Supreme Court or any particular court of appeals (App. at 6a-7a). The Court recognized, to the contrary, that a general constitutional rule may apply with obvious clarity to the specific conduct at issue (App. at 7a-10a). The Court concluded, however, that the unlawfulness of Ringgold's actions was not demonstrated, let alone apparent. Under these circumstances, the petitioner's reliance on *Lanier* is misplaced.

II. A REASONABLE POLICE OFFICER WOULD NOT HAVE UNDERSTOOD THAT RESTRICTING THE MANNER IN WHICH PETITIONER COULD RECEIVE DEPARTMENTAL INFORMATION WOULD VIOLATE ANY CLEARLY ESTABLISHED FIRST AMENDMENT RIGHT.

A. There Is No Clearly Established Right To Governmental Information.

As a general matter, there is no established constitutional right of access to information relating to the internal or external affairs of a police department or relating to its criminal investigations. Neither "the First Amendment nor the Fourteenth Amendment mandates a general right of access to governmental information or sources of information within the government's control." *Houchins v. KQED, Inc.*, 438 U.S. 1, 15-16 (1978) (plurality opinion). The First Amendment "does not guarantee the press a constitutional right of special access to information not available to the public generally." *Branzburg v. Hayes*, 408 U.S. 665, 684-85 (1972); *accord Zemel v. Rusk*, 381 U.S. 1, 17 (1965); *Capital Cities Media, Inc. v. Chester*, 797 F.2d 1164, 1173 (3d Cir. 1986).

In the case of proceedings that are traditionally open to the public and that are enhanced by public access, such as criminal trials, the Supreme Court has found in the First Amendment a qualified right of access. *See, e.g.*, *Press Enterprises Co. v. Superior Court*, 464 U.S. 501,

510 (1984); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 581 (1980). In this setting, the public and press have a constitutional right to access unless the denial of access is necessitated by an overriding governmental interest and is narrowly tailored to serve that interest. *See Press Enterprises*, 464 U.S. at 510; *Richmond Newpapers*, 448 U.S. at 581. It is obvious, however, that police stations and police investigations do not share the traditions of openness on which the Court relied in establishing a qualified right of access in *Press Enterprises* and *Richmond Newspapers*. The plaintiff did not assert below, and cannot establish on appeal, that either the Baltimore City Police Department or the defendant had an affirmative duty to make available to journalists sources of information not available to members of the public generally.

B. There Is No Clearly Established Right To Nondiscriminatory Access To Governmental Information.

What the plaintiff asserted below, and what the Court of Appeals rejected, is that the defendant violated plaintiff's constitutional rights by restricting or limiting her access to information that the Department made available to other members of the media. The Court of Appeals correctly determined that no such right is clearly established since (1) the right has not been adjudicated specifically; and (2) the unlawfulness of Ringgold's conduct was not apparent from preexisting law (App. at 6a-10a).

1. The Alleged Right Had Not Been Established By Specific Adjudication.

As the petitioner concedes and as the Court of Appeals recognized, no Supreme Court or Fourth Circuit decision has held that reporters have a constitutional right of equal or non-discriminatory access to government information that need not be made available to the public (App. at 6a). As the Court of Appeals stated, moreover, there is little support for plaintiff's contention even in the case law of other circuits (App. at 7a).

Petitioner relies on two circuit court decisions to establish her right (Pet. at 11). Neither decision purports to establish a general right of reporters to equal access to government information. Moreover, the facts of these cases differ markedly from Ringgold's limitations on the manner in which Snyder could access Departmental information and his refusal to allow her to participate in filming on Department premises.

Anderson v. Cryovac, 805 F.2d 1 (1st Cir. 1986) involved the validity of a protective order that selectively excluded certain media entities from access to discovery materials. *Id.* at 9. The present case, in contrast, does not involve access to judicial proceedings, but rather involves access to police department information. Moreover, unlike the situation in *Anderson*, Ringgold did not impose an outright ban on access, but only limited the manner in which Snyder was permitted to gather certain police department information.

American Broadcasting Cos. v. Cuomo, 570 F.2d 1080 (2d Cir. 1977), held that New York political candidates could not selectively exclude ABC from "public events" and "public function[s]"—primary election events—while admitting other media representatives. *Id.* at 1080. The present case does not involve access to public events, but involves the legality of limitations Ringgold imposed in the manner in which Snyder is permitted to gather information from the police department.

The plaintiff relies also on several older lower court decisions, *see Quad City Community News Service, Inc. v. Javens*, 334 F. Supp. 8 (S.D. Iowa 1971); *Southwestern Newspapers Corp. v. Curtis*, 584 S.W.2d 362 (Tex. Civ. App. 1979); *Westinghouse Broadcasting, Inc. v. Dukakis*, 409 F. Supp. 895 (D. Mass. 1976). Those cases are distinguishable from the present situation in the purpose and scope of the limitations imposed. *See Quad-City*, 334 F. Supp. at 13-14; *Curtis*, 584 S.W.2d at 364. Furthermore, in those decisions, unlike the instant case, the plaintiffs were *news organizations* that sought and obtained injunctive relief.

As the Court of Appeals recognized, the fact that plaintiff is forced to rely on these few cases—the facts of which differ markedly from Ringgold's limitations on the manner in which Snyder could access Department information and his refusal to allow her to participate in filming an exclusive report on Department premises—demonstrates that there is little support for her contentions even in the case law of other circuits (App. at 7a).

2. *Core First Amendment Principles Do Not Apply With Obvious Clarity To Respondent's Specific Conduct.*

The Court of Appeals also correctly held that Ringgold's decisions to deal with Snyder only in writing (rather than to speak to her directly) and to prohibit her from participating in filming of exclusive WBFF-TV interviews on Department premises did not "violate any right that is manifestly included within more general applications of the core . . . principles of the First Amendment" (App. at 7a). The petitioner completely ignores the Fourth Circuit's analysis, which found many weaknesses in plaintiff's position (App. at 7a-10a).

First, the court reasoned that plaintiff's alleged right to equal access is not clearly established because it runs counter to well established media practices:

> The many weaknesses in plaintiff's position are readily apparent. For example, the broad rule for which plaintiff argues would presumably preclude the common and widely accepted practice among politicians of granting an exclusive interview to a particular reporter. And, it would preclude the equally widespread practice of public officials declining to speak to reporters whom they view as untrustworthy because the reporters have previously violated a promise of confidentiality or otherwise distorted their comments. Additionally, even if the right was somehow limited to situations in which

> access is provided to a broad spectrum of reporters, the plaintiff's rule would still presumably preclude the White House's practice of allowing only certain reporters to attend White House press conferences, even though space constraints make it impractical to open up the conference to all media organizations. That plaintiff's rule flies in the face of so much well settled practice suggests, at least, that it is not clearly established.

(App. at 8a.)

Second, the Court reasoned that plaintiff's alleged right to equal access is not clearly established because it would confer an untenable special status on the media:

> Moreover, the right of "equal access" for which plaintiff argues cannot be limited to members of the media without conferring a privileged First Amendment status on the press, and the Supreme Court has affirmed that the press does not enjoy special First Amendment rights that exceed those of ordinary citizens. *See Branzburg v. Hayes*, 408 U.S. 665, 684-85 (1972) (noting that the First Amendment "does not guarantee the press a constitutional right of special access to information not available to the public generally"). Consequently, plaintiff's asserted right would require that, in each and every circumstance where the government made news available, it would

> have to give access to that information to *everyone* on equal terms. The broad rule for which plaintiff contends thus appears untenable. In any event, the contours of any such right would be difficult to delineate, and certainly cannot be discerned through a straightforward and obvious application of existing First Amendment principles.

(App. at 8a-9a.)

Finally, the court reasoned that plaintiff's alleged right to equal access is not clearly established because it is not an obvious application of the general principle prohibiting content or viewpoint discrimination:

> Plaintiff also argues that, even if a government agency can favor one reporter over another for "legitimate" reasons, it cannot do so because it likes one reporter's stories better than another's. Plaintiff claims that this more specific right not to have her access to government information sources restricted because of her viewpoint and the content of her stories is an "obvious application" of the core First Amendment principle prohibiting content and viewpoint discrimination. However, it is a large analytical leap from holding that government may not regulate or prohibit private speech on the basis of content or viewpoint to holding that government may not make "content-based" distinctions between reporters in granting access to

> government information. Indeed, the government can certainly control the content of its own speech in ways it could never regulate or control the content of private speech. *See, e.g., Rust v. Sullivan*, 500 U.S. 173 (1991). Arguably, by analogy, the government should be able to choose to limit its audience in a way it could not choose to limit the audience available to private speakers. In any event, it should be apparent that the contours of any right that a reporter has not to be discriminated against in her access to government information based on the content of her prior stories are not "sufficiently clear" that Ringgold—or any other "reasonable official"—would have understood that simply restricting the manner in which Snyder could receive Department information and refusing her exclusive interviews on Department premises violated that right. *Anderson*, 483 U.S. at 640.

(App. at 9a-10a.)

The petitioner does not even challenge the Court of Appeals' analysis and reasoning but instead seeks to cloak herself in the general penumbra of content-based discrimination. The fatal flaw in petitioner's analysis is that she is attempting to extend general First Amendment principles in a manner that would not be obvious to the average police officer at the stationhouse. The contours of a reporter's rights to nondiscriminatory access to

government information, if any, are not apparent from preexisting law.

Freedom from content-based discrimination is a principle established only at a general and abstract level, not at the level of application to the conduct challenged here. Neither the Supreme Court not any circuit court has established a general prohibition on content-based discrimination by government officials in granting access to govenrment information. The defendant cannot be held liable because he failed to accurately predict that general First Amendment decisions might someday be extended to prohibit goverment officials from favoring some journalists over others in disseminating government information. *See Anderson.* Under these circumstances, regardless of whether plaintiff has established a genuine issue of fact concerning whether the restrictions on palintiff's access were content-based (a point which defendant contests), plaintiff has not established any violation of any clearly established constitutional right.

C. The Defendant Could Reasonably Have Believed That His Actions In Restricting Plaintiff's Access To Departmental Information Were Lawful.

Ringgold reasonably could have believed that the Department's interest in deterring and preventing Snyder's abuse of the Department's public information system outweighed plaintiff's interest in unencumbered access to departmental information. In determining whether a restriction violates a right of access, this Court has balanced the interests of the parties. In *Pell v. Procunier*,

417 U.S. 817 (1974), for example, a case involving public and press access to prisons, the Court quoted and relied upon a balancing test set forth in *Branzburg v. Hayes*, 408 U.S. at 690-91, which upheld grand juries' power to question reporters about confidential sources in part on the ground that the Court could

> perceive no basis for holding that the public interest in law enforcement and in ensuring effective grand jury proceedings is insufficient to override the consequential, but uncertain, burden on news gathering that is said to result from insisting that reporters, like other citizens, respond to relevant questions put to them in the course of a valid grand jury investigation or criminal trial.

Pell, 417 U.S. at 833.

In the present case, similarly, the defendant reasonably could have believed that the Department's legitimate interests outweighed plaintiff's interests in having unrestricted access to departmental information. There was no governing authority dictating to Ringgold how the interests of plaintiff and the Department's interests must be balanced and accommodated.

The defendant instructed public affairs staff and new officers not to go "off-the-record" with the plaintiff, in substantial part because she violated a promise of confidentiality and misrepresented to her employer the information she had received from the Department (J.A. at 14). The Department has a legitimate interest in

ensuring the confidentiality of information and sources provided to the media on an "off-the-record" basis. For example, a reporter who publishes "off-the-record" information could compromise the integrity of a pending investigation. A reporter who discloses the identity of a confidential source on a sensitive subject relating to departmental affairs could compromise the source's relationships with fellow officers or his superiors. Similarly, the Department has a legitimate interest in ensuring that media reporters give accurate and complete information to their employers so that the public will receive full and accurate reporting regarding criminal incidents and departmental affairs.

By violating her promise of confidentiality and by misrepresenting information she had received from the Department, plaintiff demonstrated that she could not be trusted to work within existing departmental parameters. Under these circumstances, the defendant could reasonably have believed that he was justified in advising his fellow officers not to go "off-the-record" with the plaintiff and in advising the *City Paper* staff that he would no longer speak with the plaintiff.

The defendant instructed plaintiff to submit her requests for information in writing, notwithstanding that other journalists were not required to submit requests in writing. However, the defendant reasonably could have believed that plaintiff's treatment was justified by her abuse of the public affairs system. The plaintiff, unlike other journalists, excessively and needlessly paged public information officers at home on weekends (J.A. at 15, 36 ¶ 7). The plaintiff continued paging officers even after the defendant had warned plaintiff and her employer on

several occasions not to do so. The defendant was not required to tolerate indefinitely plaintiff's behavior: The press has no special immunity from the application of general rules of conduct in the gathering of news. *See Cohen v. Cowles Media Co.*, 501 U.S. 663, 669 (1991); *Food Lion, Inc. v. Capital Cities/ABC, Inc.*, 887 F. Supp. 811, 821 (M.D.N.C. 1995). To address plaintiff's abusive behavior, the defendant reasonably could have believed that he was justified in requiring plaintiff to submit requests for information in writing.

The defendant also instructed WBFF-TV (her new employer) that it would not be allowed to film a story about the homicide division on Department property if plaintiff was part of the television crew, and WBFF-TV filmed the story without the plaintiff. Given plaintiff's pattern of misbehavior, the defendant reasonably could have believed that he was justified in not permitting her such unrestricted access to the Department.

The defendant did not deny plaintiff all access to information, but only placed on the plaintiff's news-gathering what he reasonably could have believed to be legitimate time, space, and manner restrictions. Significantly, the defendant produced all of the information that plaintiff claims she was denied to plaintiff's media sponsors; it was the plaintiff's misconduct, not the viewpoints expressed by the news stories, that the defendant sought to redress. There was no established law that would have made a reasonable officer in the defendant's position understand that his actions were unlawful. The alleged unlawfulness of the defendant's conduct was not apparent in light of preexisting law. Under these circumstances, the Court of

Appeals correctly held that the defendant is entitled to qualified immunity.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Robert C. Verderaime, #00581

Verderaime & DuBois, P.A.
1231 North Calvert Street
Baltimore, Maryland 21202
(410) 752-8888

Attorneys for Appellant